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Attorney for Plaintiff  
 ALICE GONZALEZ

UNITED STATES DISTRICT COURT  
 CENTRAL DISTRICT OF CALIFORNIA WESTERN DIVISION

ALICE GONZALEZ, an individual,  
 Plaintiff,

v.

CITY OF VENTURA, a municipal  
 corporation; OFFICER JOEL KLINE,  
 individually, and in his official capacity  
 as a Police Officer for the City of  
 Ventura; and DOES 1 through 10,  
 INCLUSIVE,

Defendants.

Case Number: CV11-03916 GAF  
 (MRWx)

PLAINTIFF'S OPPOSITION TO  
 DEFENDANTS' NOTICE OF  
 MOTION AND MOTION TO  
 DISMISS SECOND AMENDED  
 COMPLAINT [FRCP 12(B)(6)]:  
 MEMORANDUM OF POINTS AND  
 AUTHORITIES IN SUPPORT:  
 PROPOSED ORDER

Hearing Date: June 18, 2012  
 Time: 9:30am  
 Courtroom: 740 (Roybal)  
 Judge: Honorable Gary A.  
 Feess

TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

PLEASE TAKE NOTICE that on June 18, 2012, at 9:30 a.m., or as soon  
 thereafter as the matter can be heard in the above entitled court before the Honorable  
 Gary A. Fees, United States District Court, in courtroom 740 Roybal, of the United  
 States Courthouse located at 255 East Temple Street, Los Angeles, California, there  
 will be a hearing on Defendants' Notice of Motion and Motion to Dismiss. Plaintiff  
 ALICE GONZALEZ hereby oppose Defendants' Notice of Motion and Motion to

1 Dismiss.

2 The grounds for the opposition to Defendants' Notice of Motion and Motion  
3 to Dismiss are set forth in the accompanying memorandum, and upon such grounds  
4 as may be considered by the Court.  
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8 Date: May 29, 2012

Respectfully Submitted,

9 Plaintiff ALICE GONZALEZ

10 LAW OFFICES OF STEPHEN A. KING  
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*Leatherman v. Tarrant Cty. Narcotics Intelligence & Coordination Unit*, 507 U.S. 163, 168 (1993)

1 *Burlington Indus v. Milliken & Co.*, 690 F.2d 380, 390 (4<sup>th</sup> Cir.1982)

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4 *Morel v. DaimlerChrysler AG*, 565 F.3d 20, 23 (1stCir.2009)

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10 FEDERAL RULES

11 Federal Rule of Civil Procedure 12(b)(6)

1 MEMORANDUM OF POINTS AND AUTHORITIES

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4 I.

5 A COURT REVIEWING A MOTION TO DISMISS MUST ACCEPT AS TRUE  
6 LEGAL CHARACTERIZATION AND CONCLUSIONS MADE BY THE  
7 PLAINTIFF'S COMPLAINT

8  
9 In determining a motion to dismiss for a failure to state a claim under  
10 Federal Rules of Civil Procedure section 12(b)(6), the court "accept[s]  
11 [plaintiff's] allegations as true and construe them in the light most favorable to  
12 [the plaintiff]." *In re Silicon Graphics*, 183 F.3d 970, 983 (9th Cir. 1999)  
13 (citation omitted). In addition, "[t]he court is bound to give the plaintiff the  
14 benefit of every reasonable inference to be drawn from well-pleaded facts."  
15 *Walleri v. Fed. Home Loan Bank of Seattle*, 83 F.3d 1575, 1580 (9th Cir. 1996)  
16 (citation omitted).

17 Indeed claim is plausible on its face, and thus has provided the requisite to  
18 survive a motion to dismiss, when it pleads factual content that would allow a court  
19 to draw the reasonable inference that defendant is liable for the alleged misconduct.  
20 *Ashcroft v. Iqbal*, 129 S.Ct. 1937, 1949 (2009) (citing *Bell Atlantic Corp. v.*  
21 *Twombly*, 550 U.S. 544, 556 (2007)). A plaintiff only needs to state "enough fact[s]  
22 to raise a reasonable expectation that discovery will reveal evidence." *Padilla v.*  
23 *Yoo*, 633 F. Supp. 2d 1005, 1019 (N.D.Cal. 2009) (citing *Twombly*, 550 U.S. at  
24 545). "That is, a plaintiff must allege facts that, when taken as true, are "suggestive  
25 of illegal conduct." *Padilla*, 633 F. Supp. 2d at 1019 (citing *Twombly*, 550 U.S. at  
26 564 n.8).  
27  
28

1 Allegations in a Civil-rights suits generally do not have to be pleaded with  
 2 particularity. In 1993, the Supreme Court held that heightened factual specificity  
 3 is not required in civil-rights suits against municipalities, and in 2002, the Court  
 4 held that unless a specific statute imposes a heightened pleading requirement,  
 5 FRCP 8(a)'s requirement of a "short and plain statement" applies. *Swierkiewicz*,  
 6 534 U.S. at 513. (2002); *Leatherman v. Tarrant Cty. Narcotics Intelligence &*  
 7 *Coordination Unit*, 507 U.S. 163, 168 (1993). Together, *Swierkiewicz* and  
 8 *Leatherman* cast doubt on any heightened pleading requirement in civil-rights  
 9 cases.

10 \_\_\_\_\_ To be sure, a plaintiff has through its well pleaded complaint outlined and  
 11 articulated facts at issue which show more than a reasonable inference that  
 12 Plaintiff suffered harm from the actions of Defendant because the Defendant was  
 13 at all times in control of the area where the violation occurred and willfully  
 14 denied the Plaintiff any reasonable medical attention at the time of the injury.

15 In reviewing the sufficiency of the complaint, the issue is not whether the  
 16 plaintiff will ultimately prevail but whether the plaintiff is entitled to offer  
 17 evidence to support the claims asserted. *Scheuer v. Rhodes*, 416 U.S. 232, 236  
 18 (1974).

19 Plaintiff is entitled to conduct discovery and collect evidence in order to show  
 20 that her rights have been violated and prove the points outlined in the Plaintiffs  
 21 Complaint against the Defendants. This rule does not pass judgement on the strength  
 22 of the case, but rather is set in place by the court in order for the Plaintiff's voice to  
 23 be heard in a United States court of law. \_

24 On a motion to dismiss under Rule 12(b)(6), a court must accept as true all factual  
 25 allegations pleaded in the complaint and must construe them "in the light most  
 26 favorable to the non-moving party." *Cahill*, 80 F.3d at 337-38.

27 Under Federal rule of Civil Procedure 8(a)(2), a complaint must contain "a short  
 28 and plain statement of the claim showing that the pleader is entitled to relief."  
 FRCP 8(a)(2). The Supreme Court has interpreted this rule to allow a complaint

1 to survive a motion to dismiss only if it “contain[s] sufficient factual matter,  
 2 accepted as true, to ‘state a claim to relief that is plausible on its face.’” *Ashcroft*  
 3 *v. Iqbal*, 129 S. Ct. 1937, 1947 (2009). “A claim has facial plausibility when the  
 4 plaintiff pleads factual content that allows the court to draw the reasonable  
 5 inference that the defendant is liable for the misconduct alleged. *Id.*

6 FRCP 12(b)(6) does not permit dismissal based on judge’s disbelief on  
 7 complaint’s factual allegations; *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544,  
 8 555-56 & n.3 (2007)., *Neitzke v. Williams*, 490 U.S. 319, 326-27 (1989).

## 9 10 II.

### 11 CONDENSED STATEMENT OF FACTS

12 \_\_\_\_\_ On or about 3:20 pm May 7, 2009, SHERIFF DEPUTY’S of  
 13 VENTURA COUNTY, while acting under color of law failed to use reasonable  
 14 force and care in detaining, arresting, and booking PLAINTIFF ALICE  
 15 GONZALEZ. Said acts included placing PLAINTIFF in danger of unnecessary  
 16 harm when they did not properly maintain a leak which formed a puddle of water  
 17 that caused PLAINTIFF to fall while in handcuffs in violation of PLAINTIFF’S  
 18 federal constitutional rights thereby causing PLAINTIFF to suffer severe physical  
 19 injury, emotional distress and damage to their person. As a result of the  
 20 DEFENDANT’S negligence and deliberate indifference to the consequences of  
 21 their actions; ALICE GONZALEZ suffered, a shoulder injury, a knee injury,  
 22 swollen knee, injuries to her back, fractured wrist, swollen hand, fractured finger,  
 leg bruises, chest pains, sore ribs, and numbness of hands, arms and shoulders  
 from handcuffs.

23 The defendant officer subsequently teased and ridiculed the PLAINTIFF in  
 24 order to further humiliate and justify their actions and related to this matter.  
 25 PLAINTIFF was never offered any medical assistance after it was requested by  
 26 the PLAINTIFF concerning her fall and subsequent injuries, after the  
 27 DEFENDANTS were aware of her fall to the floor and possible injuries.  
 28



1 III.

2 THE STATUE OF LIMITATIONS DOES NOT BAR PLAINTIFFS FEDERAL  
 3 CLAIMS

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 6 FRCP 15(c)(1)(C)(ii) “asks what the perspective defendant knew or should  
 7 have known during the [FRCP]4(m) period, not what the plaintiff knew or should  
 8 have known at the time of filing her original complaint. ***Krupski c. Costa***  
 9 ***Crociere S.p.A.***, 130 S.Ct. 2485, 2493-94 (2010). The information in the  
 10 plaintiff’s possession is relevant only if it bears on the defendant’s understanding  
 11 of whether the plaintiff made a mistake regarding the proper party’s identity. ***Id.***  
 12 For purposes of that inquiry, it would be error to conflate knowledge of a party’s  
 13 existence with the absence of mistake. ***Id. at 2496.*** FRCP 15(c) plainly sets forth  
 14 as exclusive list of requirements for relation back, and the amending party’s  
 15 diligence is not among them. ***Id.*** The speed with which a plaintiff moves to  
 16 amend her complaint or files an amended complaint after obtaining leaving to do  
 17 so has no bearing on whether the amended complaint relates back. ***Id.***

18 Rule 15(c) is based on the notion that once litigation involving particular  
 19 conduct or a given transaction or occurrence has been instituted, the parties are  
 20 not entitled to the protection of the statute of limitation against the later assertion  
 21 by amendment of defenses or claims that arise out of the same ‘conduct,  
 22 transaction, or occurrence.’ ***Hall v. Spencer Cty.***, 583 F.3d 930, 934 (6<sup>th</sup> Cir.  
 23 2009). In short, a court will permit a party to add even a new legal theory in an  
 24 amended pleading as long as it arises out of the same transaction or occurrence.  
 25 ***Id.*** Rule 15(c)(2) does not define the scope of the terms ‘conduct, transaction, or  
 26 occurrence.’ When applying this standard to the facts of a given case, we give  
 27 meaning to those terms not by generic or ideal notions of what constitutes a  
 28 ‘conduct, transaction, or occurrence,’ but instead by asking whether the party  
 asserting the statue of limitations defense had been placed on notice that he could  
 be called to answer for the allegations in the amended pleading. ***Id.***

FRCP 15(c) also must be interpreted in light of the fundamental tenor of the  
 FRCP, which is one of the liberality rather than technicality. ***Id.***

1 Under Rule 15(c), the original complaint still must be filed within the state-  
 2 supplied limitations period. *Morel v. DaimlerChrysler AG*, 565 F.3d 20, 23  
 3 (1st Cir.2009)

4 We have recognized that FRCP 15(c)(1)(C) can be applied to amendments that  
 5 change the identity of plaintiffs. *Young v. Lepone*, 305 F.3d 1, 14 (1st Cir.2002)

6 The Supreme Court formerly held that a complaint should not be dismissed for  
 7 failure to state a claim unless it appeared beyond doubt that the Plaintiff could  
 8 prove no set of facts to support a claim for relief. *Conley v. Gibson*, 355 U.S. 41,  
 9 45-46 (1957). The Court retired the “no set of facts” language from *Conley* and  
 10 now requires a pleading to have enough facts to state a claim for relief that is  
 “plausible on its face.”

11 Where there are nonconclusory factual allegations, the court must assume that  
 12 they are true and then determine whether they plausibly give rise to an entitlement  
 13 to relief. *Ashcroft v. Iqbal*, 556 U.S. 662, 129 S.Ct. 1937, 1949-1950 (2009). The  
 14 court must indulge all inferences in favor of the Plaintiff. *Collins v. Morgan*  
 15 *Stanley Dean Witter*, 224 F.3d 496, 498 (5<sup>th</sup> Cir.2000).

16 The response should emphasize that the court must assume that all material  
 17 facts contained in the complaint are true and resolve all inferences in the  
 18 plaintiff’s favor, and that FRCP 12(b)(6) motions are disfavored in light of the  
 19 liberal pleading policies of the FRCP. *Collins v. Morgan Stanley Dean Witter*,  
 224 F.3d 496, 498 (5<sup>th</sup> Cir.2000).

20 In deciding a motion to dismiss for failure to state a claim, the court limits its  
 21 inquiry to facts stated in the complaint. FRCP 12(d); *Tackett v. M&G Polymers,*  
 22 *USA, LLC*, 561 F.3d 478, 487 (6<sup>th</sup> Cir.2009).

23  
 24 The response should demonstrate that the complaint provides fair notice of the  
 25 plaintiff’s claims and that the facts alleged sufficiently show a plausible claim for  
 26 relief. *Ashcroft v. Iqbal*, 556 U.S. 662, 129 S.Ct. 1937, 1949-1950 (2009).

27 To avoid a dismissal under FRCP 12(b)(6) for failure to state a claim, the  
 28 Plaintiff must (1) give the defendant fair notice of the nature of the claim and (2)

1 provide plausible factual allegations to support the claim. *Starr v. Baca*, 652 F.3d  
2 1202, 1216 (9<sup>th</sup> Cir.2001);

### 3 4 **Fair Notice**

5 The complaint must provide fair notice of the claim by including allegations that  
6 outline the elements of the claim. *Starr v. Baca*, 652 F.3d 1202, 1216 (9<sup>th</sup>  
7 Cir.2001);

8 The plaintiff's factual allegations must be sufficient to notify the defendant of  
9 the nature and basis of the claim and the type of litigation involved. *Burlington*  
10 *Indus v. Milliken & Co.*, 690 F.2d 380, 390 (4<sup>th</sup> Cir.1982)

11 Defendants were notified of the possibility of Plaintiff's §1983 claims in May  
12 2011 and January 2012. As such, Defendant had ample time to prepare for this  
13 action. Defendant also possess or have ready access to documents produced by  
14 the May 7, 2009, arrest.

### 15 16 **Plausible factual allegations**

17 A claim is plausible on its face when the plaintiff pleads factual content that  
18 allows the court to draw a reasonable inference that the defendant is liable for the  
19 alleged misconduct. *Iqbal*, 556 U.S. at 662, 129 S.Ct at 1949. In *Iqbal*, the  
20 Supreme Court stated that determining whether the plausibility standard has been  
21 met will be "context-specific" and will require a judge to use her experience and  
22 common sense. *Iqbal*, 556 U.S. at 662, 129 S.Ct. at 1950. Courts are still  
23 developing the standard for what constitutes sufficiently plausible facts.

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## IV.

ARGUMENT - - SIX MONTH GOVERNMENT CLAIM COMPLETED

The plaintiff has filed the required Six-month claim for damages or injury addressed to the Board of Supervisors County of Ventura Administration Building, 4<sup>th</sup> Floor. 800 South Victoria Avenue, Ventura, CA 93009. Fully completed by the Plaintiff Alice Gonzales detailing the incident against the original named Defendant because the incident occurred inside a county facility.

The county of Ventura was presented with the Government Code Section §913, claim number 10500147. Notice was given that the claim was presented to the Clerk of the Board of Supervisors on 10/08/09, pertaining to the above referenced matter, was rejected on March 4th, 2010. Notice of the claim was presented to the Clerk of the Board of Supervisors on 10/08/2009 well within the six-month time limits outlined in Government Code Section § 945.6, for the incident that occurred 5 months and one day prior 05/07/2009.

All of this discovery will be exchanged between the parties per the FRCP 26 initial disclosures.

\_\_\_\_\_ Here the Plaintiff has shown through the facts of the Complaint that there was a risk of harm due to the fact that enough water had accumulated that water on the booking room floor over a substantial period of time such that the Plaintiff lost her footing and fell. The Plaintiff also showed that the Defendants' were aware that the risk of harm existed because the officer Defendant humiliated the Plaintiff after the injury by teasing her about the way she fell to the ground when she hurt herself. This signifies or suggest that the fall was done by reckless indifference to Plaintiff's rights. The fall could be the intended result of prison officials looking to poke fun at suspects by recording them falling on slippery floors. \_\_\_\_\_

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1 VI.

2 THE FAILURE TO OFFER ANY MEDICAL ASSISTANCE IS NOT  
 3 CONTRADICTED BY THE ALLEGATION THAT THE PLAINTIFF WAS  
 4 TAKEN TO THE COUNTY MEDICAL CENTER

5  
 6 In *Estelle v. Gamble* (429 U.S. 97 (1976)), the Court held that convicted  
 7 prisoners could challenge denials of medical care under the Eighth Amendment. In  
 8 such cases, Plaintiff's must demonstrate that the defendants exhibited a "deliberate  
 9 indifference" to the serious medical needs. Mere negligent delivery of medical  
 10 care, the traditional medical malpractice case does not rise to an Eighth  
 11 Amendment violation, and the conduct of prison officials must be intentional or  
 12 close to it. *Wilson v. Seiter*, 501 U.S. 294 (1991).

13 \_\_\_\_\_Plaintiff complained immediately to the Defendant officer once the injury  
 14 occurred that she was injured and in need of medical attention. Instead of checking  
 15 her immediately, she was continued to through the booking and intake process. A  
 16 nurse was eventually called in who told the officer Defendant that the Plaintiff  
 17 needed immediate emergency assistance. The Plaintiff was left alone for 2 hours  
 18 before being relocated where she could be seen by a medical professional.

19 The recommendation by the nurse at the booking facility satisfies the recent  
 20 Ninth Circuit treatment of jail injuries in *Clouthier v. County of Contra Costa*, 591  
 21 F.3d 1232 (9<sup>th</sup> Cir. 2010). The objective component of a serious deprivation is met  
 22 because of the seriousness of the injury sustained combined with the dangerous  
 23 condition of the booking room floor. Also the subjective component of the  
 24 Defendants's state of mind is established because the nurse explained the  
 25 immediate need for medical attention which was ignored.

26 VII.

27 PUNITIVE DAMAGES

28 A plaintiff may receive punitive damages in a § 1983 action "when the  
 defendant's conduct is shown to be motivated by evil motive or intent, or when it

1 involves reckless or callous indifference to the deferally protected rights of  
 2 others.” *Smith v. Wade*, 461 U.S. 30, 56 (1983). The Ninth Circuit has articulated  
 3 this test as granted punitive damages only where the defendant acted maliciously,  
 4 wantonly, or oppressively. *Dang v. Cross*, 422 F.3d 800, 808-10 (9<sup>th</sup> Cir. 2005).  
 5 Accordingly, a plaintiff seeking punitive damages must allege facts showing that  
 6 the defendant acted with such intent. *Id.*

7 Plaintiff makes factual allegations that, if taken as true, support his assertion that  
 8 Defendant Deputies’ conduct was “malicious, wanton, and oppressive.”  
 9

# VIII.

## CONCLUSION

10 Plaintiff therefore requests that the Court deny Defendants’ motion to  
 11 dismiss the federal causes of action of the amended complaint and also not dismiss  
 12 the state-law cause of action.  
 13

14 Dated: May 29, 2011

LAW OFFICES OF STEPHEN A. KING

15  
 16 /S/ Stephen A. King

17 STEPHEN A. KING

18 Attorney for Plaintiff

19 ALICE GONZALEZ  
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**[PROPOSED] ORDER**

THIS MATTER having come before the Court upon application of Defendants CITY OF VENTURA, a municipal corporation; OFFICER JOEL KLINE, individually and in his official capacity as a Sheriff Deputy for the County of Ventura; and DOES 1 through 10 inclusive; Motion to Dismiss Plaintiffs Complaint submitted by Plaintiff ALICE GONZALEZ.

It appearing, upon arguments of counsel and for good cause having been established,

IT IS HEREBY ORDERED that:

1. Defendants CITY OF VENTURA, a municipal corporation; OFFICER JOEL KLINE, individually and in his official capacity as a Police OFFICER for the CITY of Ventura; and DOES 1 through 10 inclusive; Notice of Motion and Motion to Dismiss Plaintiffs Complaint under Federal Rule of Civil Procedure 12(b)(6) is denied.

2. Plaintiff ALICE GONZALEZ's Motion opposing Decedent's Motion to Dismiss Plaintiff's Second Amended Complaint is thereby is granted.

IT IS SO ORDERED.

Dated: \_\_\_\_\_

\_\_\_\_\_  
United States District Judge